

United States Senate

WASHINGTON, DC 20510

December 13, 2010

The Honorable Lisa Jackson,
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Jacob Lew, Director
Office of Management and Budget
Eisenhower Executive Office Building,
Room 208
1650 Pennsylvania Avenue, NW
Washington, DC 20503

Dear Administrator Jackson and Director Lew:

We write to express our concern regarding the potential impacts of pending Clean Air Act (CAA) regulations that the U.S. Environmental Protection Agency (EPA) is redeveloping for brick and structural clay processes, known as the Maximum Achievable Control Technology (Brick MACT) rule. Given our country's fragile economic recovery, this issue is critical for the continued viability of brick manufacturers and distributors in our states and the hundreds of thousands of jobs they generate nationwide. While we fully support the EPA's efforts to address risks from emissions, we request that the EPA work to produce a fair and achievable Brick MACT that reflects Congress's intent both to protect public health and the environment and to preserve jobs in communities throughout the country.

As you know, the brick industry spent approximately \$100 million between 2003 and 2006 to achieve full compliance with the original Brick MACT standard, which the D.C. Circuit Court vacated more than a year later. While the EPA now works to balance environmental and economic interests in a revised Brick MACT standard, we are concerned that the final rule may impose unworkable restrictions on an industry already confronting significant economic challenges. In particular, many plants may be forced to remove pollution controls that were installed in good faith to comply with the original Brick MACT and install more stringent technologies that are incompatible with existing controls. The potential results of an unfeasible Brick MACT standard may be higher costs and lost jobs, as some brick companies may be forced to close plants because they cannot afford or even borrow the money needed for required capital investment to replace existing controls or add newly mandated controls.

The CAA provides the EPA with broad discretion to produce a range of technologically and economically feasible pollution control options that protect public health and the environment. With this in mind, we ask that the EPA make appropriate use of this discretion by considering flexible approaches authorized by the CAA to craft a proposed Brick MACT rule. These approaches may include:

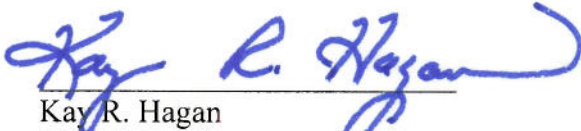
- **Non-major sources.** Section 112 (a)(1)-(2) of the CAA defines two types of emission sources: "major" and "area." As the EPA calculates the MACT floor


for a category of "major" sources, we urge EPA to consider excluding brick kilns that are non-major sources, as required by CAA § 112 (d)(3)(A). These non-major sources include facilities that are no longer "major" because of air pollution control equipment installed in good faith to meet the original Brick MACT requirements.

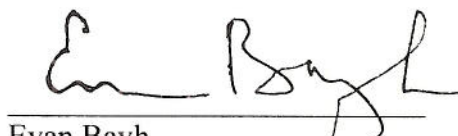
- **Real-world best performing units.** The EPA should consider exercising its discretion under CAA § 112(d)(1)-(3) to subcategorize within a source category and ensure that the MACT floor for existing sources is based on an evaluation of emission limits that actually can be achieved by real-world best performing units in a given source category. The EPA should set realistic emission standards rather than develop unrealistic MACT floors for individual pollutants that no single source can achieve.
- **Health threshold standard.** CAA § 112(d)(4) also provides the EPA the flexibility to set emission standards for pollutants that do not pose a health risk because their concentrations are below an established safe threshold. During these difficult economic times, it is crucial that the EPA consider risk information and the potential use of its "health threshold" discretion that Congress provided to minimize unnecessary controls and costs when public health and the environment already are safeguarded.

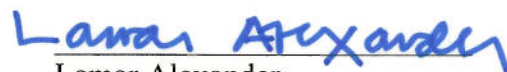
Thank you for considering the incorporation of environmentally responsible and cost-effective approaches as the EPA develops the proposed Brick MACT rule. A reasonable and achievable standard will ensure that public health and the environment are protected and that this essential industry can continue to create jobs in our states and help our struggling economy rebound.

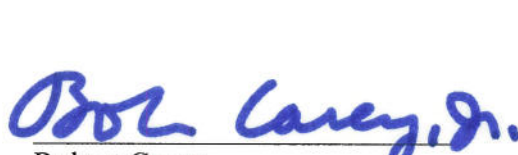
Sincerely,

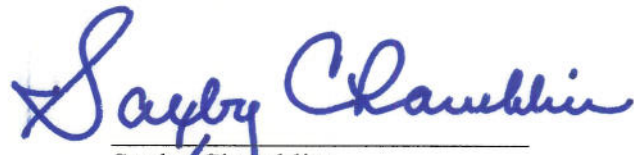

Kay R. Hagan
U.S. Senator

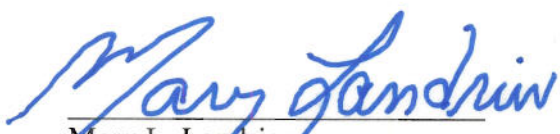

Richard Burr
U.S. Senator


Evan Bayh
U.S. Senator



Lamar Alexander
U.S. Senator


Robert Casey
U.S. Senator

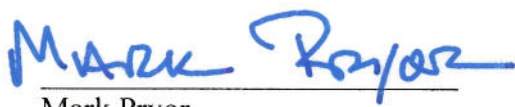

Saxby Chambliss
U.S. Senator

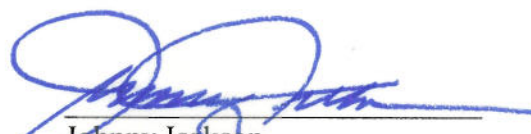

Mary L. Landrieu
U.S. Senator



Jon Cornyn
U.S. Senator

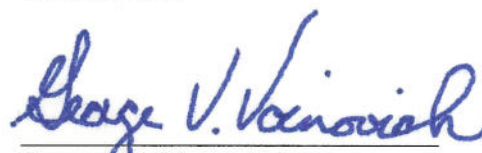

Ben Nelson
U.S. Senator



Kay Bailey Hutchison
U.S. Senator


Mark Pryor
U.S. Senator


Johnny Isakson
U.S. Senator


Debbie Stabenow
U.S. Senator


George V. Voinovich
U.S. Senator


Mark Warner
U.S. Senator

cc: Regina McCarthy, Assistant Administrator, Office of Air and Radiation, EPA
Robert Perciasepe, Deputy Administrator, EPA
Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, OMB